

## **REMARKS**

The Examiner's Action mailed April 29, 2003 has been given careful consideration by the applicants. Claims 1-48 remain in the application. Reexamination and reconsideration of the application is hereby respectfully requested.

### **The Office Action**

The Examiner objected to the Information Disclosure Statement.

The Examiner objected to claims 1-46 for use of the term "volume."

Claims 1, 2, 4-15 and 39-48 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,304,995 to Huttunen, et al.

Claims 1, 4, 9, 10, 13, 15, 17, 19-21, 24, 29, 40, 41 and 43-48 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,720,808 to Repsch.

Claims 1, 4, 9, 10, 13, 15, 17, 19-21, 24, 29, 40, 41 and 43-48 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,585,603 to Vogeley, Jr.

Claims 3 and 16-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Huttunen patent in view of U.S. Patent No. 4,510,389 to Fumoto.

### **The Claims Patentably Distinguish Over the Cited Patents**

The Examiner rejected claims 1, 2, 4-15 and 39-48 as being anticipated by the Huttunen patent. However, the Huttunen patent is directed to measuring thickness of a wall of a bottle at a point. The present application provides a system for determining the mass or volume of material within a selected region of the article under inspection. In addition, amended independent claims 1 and 46 recite that the absorption-based signal (e.g., the unabsorbed portion in claim 46) represents an amount of absorption occurring at all of a plurality of points within a selected region of an article, not at just a single point. Moreover, claims 1 and 46 recite a field of view. The Examiner cites to no fair teaching of a field of view in the Huttunen patent. Therefore, the Huttunen patent does not anticipate claims 1 or 46 (or any claims dependent thereon).

Claims 1, 4, 9, 10, 13, 15, 17, 19-21, 24, 29, 40, 41 and 43-48 were rejected as being anticipated by the Repsch patent. However, the Repsch patent recites the use of a radiation substance emitting Gamma rays, Beta rays, X-rays or neutrons. In contrast, amended claims 1 and 46 now indicate that the radiation source produces energy in the infrared and/or ultraviolet ranges. Moreover, claims 1 and 46 recite a field of view. The Examiner's citation to col. 3,

lines 24-34 of the Repsch patent does not support a fair teaching of a field of view as defined by the present invention. Therefore, claims 1 and 46 (and all claims dependent thereon) are not anticipated by the Repsch patent.

Claims 1, 4, 9, 10, 13, 15, 17, 19-21, 24, 29, 40, 41 and 43-48 were rejected as being anticipated by the Vogeley, Jr. patent. However, the Vogeley, Jr. patent relates to an x-ray apparatus for weighing an object transported on a conveyance means. In contrast, the claimed invention does not utilize an X-ray source. Again, amended independent claims 1 and 46 relate to a radiation source producing energy in the infrared and/or ultraviolet range. Moreover, a defined field of view as contemplated by the present claims is not fairly taught by the Vogeley, Jr. patent. Therefore, independent claims 1 and 46 (and all claims dependent thereon) are not anticipated by the Vogeley, Jr. patent.

Claims 3 and 16-38 were also rejected as being unpatentable over the Huttunen patent in view of Fumoto. Fumoto is apparently cited for its purported teaching of an optical band pass filter. However, the cited portions of Fumoto for this teaching do not overcome the deficiencies of Huttunen, as noted above. As such, the claims are not rendered obvious by the suggested combination. Moreover, the claims depend from independent claims submitted to be allowable. Therefore, claims 3 and 16-38 are not rendered obvious by the suggested combination.

### **Information Disclosure Statement**

The applicants submitted an Information Disclosure Statement to the USPTO on December 12, 2002. The Examiner indicates that the Information Disclosure Statement fails to comply with the rules in connection with applicants' submission of various brochures and other materials. The Examiner argues that none of these documents is dated, there is no explanation of relevance, and there is no explanation of what relationship AgrTopWave LLC has to the inventors. The Examiner contends that without a context, these documents are meaningless.

However, the group of documents was submitted, in good faith by the applicants, as a group to accomplish precisely that which the Examiner indicates is lacking. That is, the documents were submitted as a group to help place them in a context. Granted, not all of the documents have a date. However, at least some of the documents do. For example, the first page entitled "Introducing PETWall" shows a year date of 2001 (in a scroll) at the lower right portion of the document. Moreover, one of the brochures ("Quality Testing Systems")

includes a handwritten July 2001 date on the upper right corner thereof. Moreover, a letter to customers has a date of November 15, 2000. Still further, a news release entitled “Non-contact Measurement” is dated December 2000.

In addition, there is no requirement that an explanation of relevance be provided or that any relationship of the company that apparently produced these documents may have to the inventors be provided. Therefore, the Examiner is urged to consider these documents during examination.

The Examiner also notes that a letter, which is dated, indicates that patented technology is used by AgrTopWave. The Examiner stated that the applicants are “required” to supply the USPTO with any patents that cover the patented technology referred to in the letter. The applicants are unclear as to the precise meaning of this “requirement” as announced by the Examiner; however, a Supplemental Information Disclosure Statement was filed on April 1, 2003 (nearly one month before the date of the present Office Action) which contained patents purportedly assigned to AGR International.

### **Claim Objections**

The Examiner objected to the term “volume” as used by the applicants. As is clear from the specification, volume relates to the volume of material in a specified region of the container. Although the applicants believe that the Examiner’s objection is misplaced in view of the clear meaning of the word “volume” in the context of the application, claims 1 and 46 have been amended to make clear that volume relates to a volume of material, not a volume of the container. In view of this amendment, the objection should be removed.

**CONCLUSION**

In view of the foregoing, applicants respectfully submit that the claims are in condition for allowance. Early notification of such allowance is hereby respectfully requested.

Respectfully submitted,

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